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**DEC 20 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Joseph F. McDonald, et al :  
Application No. 10/085,421 :  
Filed: February 28, 2002 :  
Attorney Docket No. 67,023-008 :

**ON PETITION**

This is a decision on the petition, filed July 22, 2004, under 37 CFR 1.137(b) to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "**Renewed Petition under 37 CFR 1.137(b)**." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lack(s) item(s) (1).

The application became abandoned for failure to timely file a reply within the meaning of 37CFR 1.113 to the final Office action of October 9, 2003. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee as required by 37 CFR 1.17(b)), an amendment that *prima facie* places the application in condition for allowance, or the filing of a continuing application. See MPEP 711.03(c)(III)(A)(2). Since the amendment submitted with the instant petition does not *prima facie* place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee) or the filing of a continuing application. See attached Advisory Action.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                Mail Stop PETITION  
                            Commissioner for Patents  
                            Post Office Box 1450  
                            Alexandria, VA 22313-1450

By hand:                U.S. Patent and Trademark Office  
                            2011 South Clark Place  
                            Customer Window  
                            Crystal Plaza Two, Lobby, Room 1B03  
                            Arlington, VA 22202

By facsimile:        (703) 872-9306  
                            ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at  
(571) 272-3213.

A handwritten signature in black ink, reading "Cheryl Gibson-Baylor". The signature is fluid and cursive, with the first name "Cheryl" being more prominent.

Cheryl Gibson-Baylor  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

Attachment: Advisory Action